IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

RCRev..No. 299 of 2007(B)

RCA.170/2006 of ADDL. DISTRICT COURT, VADAKARA
RCP.12/2006 of MUNSIFF COURT, NADAPURAM
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REVISION PETITIONER/APPELLANT/RESPONDENT:

KUNHAMMAD KUTTY,
CHERUVERY VATEKKARA HOUSE,
KAVILUMPARA(PO), KAVILUMPARA AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.B.KRISHNA MANI
SRI.SIJU RAJAN
SRI.V.K.KUNHI MOOSA

RESPONDENT/RESPONDENT/PETITIONER

SEBASTIAN KURISUMOOTTIL,
KAVILUMPARA AMSOM AND DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JP

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NO.299 OF 2007-B

Dated 1st October, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioner is the tenant. The respondent is the landlord. The landlord moved the R.C.P under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). Though arrears of rent and sub-tenancy were stated in the petition, eviction was not sought on those grounds.

2. The brief facts of the case are the following: The petition schedule room is rented out on a monthly rent of Rs.180/-. The tenant has failed to pay the arrears from September, 2003. Further, he has sub-let the shop room to the tenant in the neighbouring room, Mr.Ali. The landlord has decided to start a hill produce business in the said room. His income from the landed property which comes to about Rs.40,000/- is not sufficient to make both ends meet. Therefore, he has decided to start the business. He has got two vacant rooms in the same building. But, they are on the rear

side of the building. There is a narrow pathway through the side of the building to reach the rear rooms. Further, one has to climb down through the pathway to reach those rooms, as the first floor is at the road level and the ground floor is below the level of the road. A room having road frontage alone will be suitable for the business. Since heavy vehicles cannot be taken to the said vacant rooms, the business of hill produce, which involves loading and unloading of goods to and from vehicles, cannot be carried on in the rear rooms. So, the room occupied by the tenant is required. It is also stated that the tenant is not dependent on the income from the tenanted premises. Further, there are other suitable buildings in the locality, in which the tenant can shift his business. It is pointed out that since the tenant is not doing any business at present in the tenanted room, it cannot be said that he is dependent on the income derived from it.

3. The tenant filed a counter statement, resisting the prayers in the R.C.P. According to him, the landlord has no necessity or intention to start the business. The claim is only a convenient ruse to evict him. The allegation of arrears of rent is denied by him. The plea of sub-tenancy is also unfounded, it was submitted. He is mainly depending on the income derived from the business conducted in the petition schedule room. No other rooms are available in the locality to shift his business. Therefore, he

prayed for dismissal of the R.C.P.

4. Before the Rent Controller, Ext.A1 was marked from the side of the landlord. From the side of the tenant, Exts.B1 and B2 were marked. Apart from that, Ext.C1 Commissioner's report was also marked. The landlord himself was examined as PW1 and the respondent was examined as RW1. Apart from that the Advocate Commissioner was examined as CW1. The Rent Controller found that the need set up by the landlord is bona fide. It was also found that the tenant failed to prove that he is depending on the income from the tenanted premises for his livelihood. But, the second limb of the second proviso to Section 11(3) was found in favour of the tenant by the Rent Controller. The tenant appealed. The appellate authority affirmed the finding of the Rent Controller regarding the bona fide need and also the finding of the Rent Controller under the first limb of the second proviso to Section 11(3) of the Act. Further, the appellate authority reversed the finding of the Rent Controller under the second limb of the second proviso and held that the tenant failed to prove that rooms were not available in the locality to shift his business. The above findings of the appellate authority are under challenge in this revision.

5. The learned counsel for the revision petitioner submitted that it is an admitted case that the landlord has got four acres of land. Therefore, the

claim set up by him that he requires the petition schedule room to start the business to make both ends meet, is untenable. But, even if the landlord is very affluent, still he can decide to start a business and earn some income. So, the other income of the landlord is not a relevant consideration, while considering the need set up by him.

6. The learned counsel for the revision petitioner submitted that the finding of the Rent Controller and the appellate authority that the tenant failed to prove that he is dependent on the income from the business conducted in the premises, is perverse and liable to be reversed. The learned counsel pointed out that both the authorities found that the income of the landlord from the four acres of land is insufficient for his livelihood. They also found that the income of the tenant is from two sources. He is having a plot having an extent of 30 cents and that his son is employed in Bombay. So, it is quite clear that the income from a 30 cents plot is quite insufficient. His son's income cannot be treated as his income. Therefore, having regard to the facts of the case, it should be concluded that the tenant is dependent on the income from the tenanted premises, it is submitted.

7. But, we notice that another relevant factor has also been taken into account by the authorities below, to arrive at the finding on the first limb of the second proviso against the revision petitioner. The allegation of the

landlord that the tenant has sub-let the room to the tenant of the next room has been found to be correct, based on the Commissioner's report and the deposition of the Commissioner as CW1. The Commissioner has reported that certain goods were dumped in the room. There was no cash counter, nor even a chair to show that some business was being carried out there independently. The Commissioner also deposed that Mr.Ali was found in the petition schedule room and the tenant was nowhere there. Based on the statements in the Commissioner's report and the deposition of the Commissioner, both the authorities held that the tenant is not doing business in the tenanted premises and therefore, not getting any income from there. Thus, the first limb of the second proviso to Section 11(3) was held against him. We feel that it is a plausible view on the facts of the case. It cannot be described as perverse. Therefore, in a revision under Section 20 of the Act, we cannot interfere with the same.

8. Regarding the second limb of the second proviso to Section 11(3), the appellate authority reversed the finding of the Rent Controller, which was in favour of the tenant. Even assuming the said reversal was bad and liable to be interfered with, we feel that the same will not help the tenant to get the protection of the second proviso. The findings under both the limbs of the second proviso should be in his favour. The learned counsel for the

revision petitioner tried to canvass the position that if one of the limbs of the second proviso is found in favour of the tenant, eviction cannot be ordered. In support of that submission, he relied on the Division Bench decision of this Court in **Satheesan v. Abdul Rahiman** [2003(3) KLT 1119]. The above decision lays down the well settled position in law that to get the protection of the second proviso to Section 11(3), both the limbs of that proviso should be found in favour of the tenant. But, the learned counsel for the revision petitioner relying on the decision in **Thomas v. Joseph** [1986 KLT 392] submitted that the tenant can be evicted,if only both the limbs of the second proviso are found against him. We went through the said decision. We notice that there is a mistake in the first head note in the reported decision. From the head note it would appear that both the limbs of the second proviso should be found against the tenant to evict him. But, going through the said decision, it is seen, this Court has held otherwise. It has been held that the tenant has to prove both the limbs of the second proviso, to get protection from eviction. We feel that the argument of the learned counsel on this point will amount to an abuse of the process of the court. So far, no decision of this Court has been brought to our notice, which says that unless both the limbs of the second proviso are

proved against the tenant, he cannot be evicted. The correct legal position is that if the tenant wants to get protection from eviction, he should prove both the limbs of the second proviso to Section 11(3) in his favour. In the result, the R.C.R fails and it is dismissed.

9. The learned counsel for the revision petitioner prayed that the revision petitioner may be given some time to vacate the premises. Having regard to the facts of the case, the petitioner is granted three months' time from today to vacate the premises, on condition that he files an unconditional undertaking before the executing court in the form of an affidavit, undertaking to vacate the room within three months from today. He shall also pay arrears of rent, if any, and continue to pay the monthly rent till the room is vacated. This affidavit shall be filed before the executing court within three weeks from today.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/